

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:13-CV-416-F

ROSANNA DEE ATAD, a/k/a, )  
ROSANNA DEE GRANADOS, )  
 )  
and )  
 )  
IA, a minor child, )  
by her mother ROSANNA DEE ATAD, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JEFFREY BASIL ATAD, )  
 )  
Defendant. )

**ORDER**

This matter is before the court on the Plaintiff IA's motion [DE-44] for voluntary dismissal of her claim for intentional infliction of emotional distress. For the reasons stated herein, the motion is ALLOWED.

**PROCEDURAL AND FACTUAL BACKGROUND**

Plaintiffs IA and Rosanna Atad brought claims for assault, battery, false imprisonment, and intentional infliction of emotional distress, as well as negligence and negligent infliction of emotional distress. In responses to motions for summary judgment by both plaintiffs, the court sent the defendant two *Roseboro* notices specifically advising him that failure to respond to the motions may result in judgment being entered against him. *See* Roseboro Letter [DE-22, -39]; *see also Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975). The defendant did not respond to either notice. The court granted Rosanna Atad's motion for summary judgment as to liability on

all her intentional tort claims. *See* Order of August 26, 2014 [DE-26]. The court likewise granted summary judgment to IA as to liability for her claims for assault, battery, and false imprisonment. *See* Order of January 12, 2015 [DE-41]. However, the court denied IA's motion for summary judgment as to the issue of liability for intentional infliction of emotional distress. Trial is set in this matter for the court's January 26, 2015 term. *See id.* IA now moves to dismiss her claim for intentional infliction of emotional distress. She has also moved for expedited consideration given the proximity of trial.

### **DISCUSSION**

A party may dismiss an action voluntarily, without an order of the court, by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. *See* Fed. R. Civ. P. 41(a)(1)(A)(i). In all other instances, "an action may be dismissed at [a] plaintiff's request only by court order." Fed. R. Civ. P. 41(a)(2). In determining whether to grant a motion for dismissal under Rule 41(a)(2), a court should consider the following factors: "(1) the opposing party's effort and expense in preparing for trial; (2) excessive delay or lack of diligence on the part of the movant; (3) insufficient explanation of the need for a dismissal; and (4) the present stage of litigation." *Hobbs v. Kroger Co.*, No. 98-1831, 1999 WL 156045, at \*1 (4th Cir. March 23, 1999).

Here, dismissal of IA's claim for intentional infliction of emotional distress will not result in prejudice the defendant. IA has requested dismissal of her claim with prejudice. This weighs in the defendant's favor as he will avoid relitigation of the claim. The plaintiff has also shown good cause and good faith in seeking the motion. The court agrees that dismissal will serve judicial economy and simplify a trial of the issues.

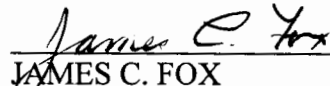
IA has also moved the court for expedited consideration of her motion. Because the defendant has done little to participate in this action beyond filing an answer, and because the defendant will not be prejudiced by dismissal, an expedited ruling is warranted. The defendant has not responded to discovery requests or to two motions for summary judgment, despite the court's attempts to notify the defendant with *Roseboro* letters. The defendant has not retained counsel nor complied with Rules 16 or 26 of the Federal Rules of Civil Procedure. The defendant is unlikely to respond to the present motion, especially when it weighs in his favor. Therefore, the court will rule on this motion without awaiting a response from the defendant.

### CONCLUSION

For the foregoing reasons, IA's motion [DE-44] for voluntary dismissal of her claim for intentional infliction of emotional distress is ALLOWED as to her claim for intentional infliction of emotional distress. IA's claim for intentional infliction of emotional distress is dismissed with prejudice. The jury trial as to damages for the plaintiffs' remaining claims will proceed as scheduled for the court's January 26, 2015 term.<sup>1</sup>

SO ORDERED.

This, the 20 day of January, 2015.

  
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JAMES C. FOX  
Senior United States District Judge

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<sup>1</sup> The court advises the parties that criminal cases require adherence to statutory as well as Constitutional speedy trial requirements. For that reason, criminal trials on a term of court always preempt civil trials. The parties should also be aware that the volatile nature of criminal cases sometimes necessitates last-minute continuances of criminal trials, and often results in unexpected eleventh-hour guilty pleas. For these reasons, it is unlikely that the trial in this matter will actually commence on January 26, 2015